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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,377	02/10/2004	Stephen Fitzgerald	CECOM-05.US (2043-3-05-10)	1127
7590	12/28/2004		EXAMINER	
David J. French Stn. "D" P.O. Box 2786 Ottawa, K1P 5W6 CANADA			GRAHAM, MARK S	
			ART UNIT	PAPER NUMBER
			3711	
DATE MAILED: 12/28/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/774,377

Applicant(s)

FITZGERALD ET AL.

Examiner

Mark S. Graham

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 and 8-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feeney '439 in view of Belanger et al. (Belanger).

Feeney discloses that end caps may be made of composites (See Col. 2, paragraph 22). While Feeney does not provided details of the composite to be used it is known in the art to use composites of crossing continuously wound fibers to construct all parts of the bat including the end cap as disclosed by Belanger. Note Belanger's whole disclosure and Figs. 2 and 2A particularly. It would have been obvious in view of Belanger's disclosure to have formed Feeney's composite end cap in the same manner to provide a strong end cap, (Claims 1, 2, 4, 5, 8, 9, 14).

Regarding claims 3, 12, and 13, absent a showing of unexpected results, the exact weight and strength of Feeney's end cap would obviously have been up to the ordinarily skilled artisan depending on the weight and strength characteristics desired in the bat.

Concerning claims 10 and 11, absent a showing of unexpected results, the exact dimensions of Feeney's adhesive would obviously have been up to the ordinarily skilled artisan depending on the strength of the bond desired between the end cap and the bat.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 5 above, and further in view of MacKay, Jr. '750.

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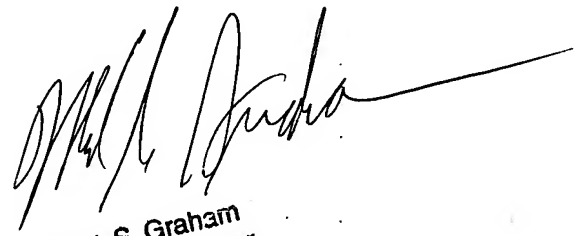
Note MacKay's Fig. 6 embodiment. It would have been obvious to one of ordinary skill in the art to have shaped Feeney's end cap in the same manner if it was desired to obtain the benefits provided by that particular embodiment of MacKay's end cap, (Claim 6).

Regarding claim 7, the exact thickness of Feeney's end cap would obviously have been up to the ordinarily skilled artisan depending on the weight and strength characteristics desired in the bat.

Uke, Yanagioka, Eggiman et al., and Sutherland have been cited for interest because they disclose similar devices.

Any inquiry concerning this communication should be directed to Mark S. Graham at telephone number 571-272-4410.

MSG
12/20/04



Mark S. Graham
Primary Examiner